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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF NEVADA**

13 LOCAL JOINT EXECUTIVE BOARD OF LAS
14 VEGAS

15 Plaintiff,

16 v.

17 HARRAH'S LAS VEGAS LLC; THE
18 SIGNATURE CONDOMINIUMS LLC;
19 BELLAGIO LLC,

20 Defendants.

CASE NO. 2:20-cv-01221

JUDGE: Hon. Richard F. Boulware, II

**RESPONSE TO DEFENDANTS
SIGNATURES' AND BELLAGIO'S
MOTION TO SEVER**

21 The Local Joint Executive Board ("Joint Board") hereby responds to the Second Motion to
22 Dismiss brought by Defendant Signature Condominiums LLC ("Signature") and Defendant Bellagio
23 LLC ("Bellagio"), (collectively, the "MGM Defendants"). (MGM Defs.'s 2d Mot. to Dismiss, ECF No.
24 7.) Because the Joint Board has voluntarily dismissed the lawsuit against Defendants Bellagio and
25 Signature and MGM Defendants have agreed to expedited arbitration over the issues raised in the
26 federal claims of this lawsuit, the MGM Defendants' Motion to Dismiss is moot while its claim for fees
27 is meritless.

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1 **1. The Motion to Dismiss MGM Defendants is Moot.**

2 Based on the agreement to hold expedited arbitration between the Joint Board and the MGM
3 Defendants, the Joint Board has voluntarily dismissed the claims against the MGM Defendants and has
4 dismissed the MGM Defendants from this Action. (ECF No. 12.) By way of the arbitration hearing, the
5 Joint Board will be able to address the collective-bargaining violations described in the Complaint in
6 the first Cause of Action. The second Cause of Action contains only a state-law claim, so the Joint
7 Board has voluntarily dismissed the MGM Defendants this lawsuit. This renders the MGM Defendants’
8 Second Motion to Dismiss moot.

9 Furthermore, the MGM Defendants’ Second Motion to Dismiss is improper under the Federal
10 Rules of Civil Procedure and binding court precedent. The Motion to Dismiss is based on disputed facts
11 that are far outside the four-corners of the Complaint or the documents incorporated therein. (E.g.
12 MGM Defs.’s 2d Mot. to Dismiss, ECF No. 7, pp. 6-8, 12, 18-19 & Exs. 3, 6-13.) “Generally, the scope
13 of review on a motion to dismiss for failure to state a claim is limited to the contents of the complaint.”
14 *Marder v. Lopez*, 450 F.3d 445, 448-49 (9th Cir. 2006) (holding it inappropriate to consider letters that
15 were written after the complaint was filed in a motion to dismiss). While this Motion was improper, it
16 is now moot.

17 **2. The MGM Defendants’ Request for Fees and Costs is Improper.**

18 The MGM Defendants’ request for fees and costs, (MGM Defs.’s 2d Mot. to Dismiss, ECF No.
19 7, pp. 21-22), has no basis in the law or in the facts of this case.

20 The facts of this case do not warrant fees for MGM Defendants. Through this case, the Joint
21 Board sought interim protections for workers’ health and safety while the parties waited for an
22 arbitration hearing date and decision. (Compl., ECF No. 1, ¶¶ 5, 88, 90-91.) Spurred by this lawsuit, the
23 Joint Board and MGM Defendants were able to agree to an expedited arbitration hearing procedure
24 within a month of the Complaint’s filing date. (MGM Defs.’s 2d Mot. to Dismiss, ECF No. 7, p. 7 &
25 Ex. 8.) The Joint Board waited to voluntarily dismiss the lawsuit until it was confident that the
26 expedited arbitration would proceed and that the MGM Defendants would comply with the collective-
27 bargaining agreement’s procedures and demands. (ECF No. 12.) Such prompt redress is a victory for
28 workers’ rights regardless of the Arbitrator’s final decision.

1 The cases that the MGM Defendants cite in support of its request are inapposite. Those cases
 2 each discuss a party's refusal to arbitrate a dispute despite clear provisions in the collective-bargaining
 3 agreement. (MGM Defs.'s 2d Mot. to Dismiss, ECF No. 7, p. 22.) The opposite is true here: the Joint
 4 Board desired prompt arbitration and got it. This litigation was in support of the parties' arbitration
 5 obligation, not a circumvention of it. For that reason, the line of cases cited by MGM Defendants has
 6 no application to the present matter.

7 Moreover, no other law supports MGM Defendants' request for fees and costs. Notably, the
 8 parties' collective-bargaining agreements do not provide for an award of fees in contract disputes. The
 9 MGM Defendants make no representation otherwise.

10 Nor can MGM Defendants' claim that Rule 11, the traditional method for seeking fees and
 11 costs, is available to them. First, MGM Defendants would have to prove that the Complaint is frivolous,
 12 which it is not. MGM Defendants have never successfully contended that the lawsuit's claims are
 13 frivolous, rather MGM Defendants has admitted that the claims are arbitrable. (MGM Defs.'s 2d Mot.
 14 to Dismiss, ECF No. 7, p. 7 & Exs. 7-8.) Second, MGM Defendants failed to comply with Rule 11's
 15 safe-harbor provision which "requires parties filing such motions to give the opposing party 21 days
 16 first to 'withdraw or otherwise correct' the offending paper." *Holgate v. Baldwin*, 425 F.3d 671, 678
 17 (9th Cir. 2005). The Ninth Circuit "enforce[s] this safe harbor provision strictly" and will "reverse the
 18 award of sanctions when the challenging party failed to comply with the safe harbor provisions." *Id.*
 19 (citations omitted). The MGM Defendants have wholly failed to comply with this rule.

20 **3. Conclusion**

21 Because the Joint Board and the MGM Defendants have agreed to expedited arbitration over the
 22 issues raised in the federal claims of this lawsuit, the MGM Defendants' Motion to Dismiss is moot and
 23 its claim for fees is meritless.

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1 Dated: July 21, 2020

Respectfully Submitted,

2 **McCRACKEN, STEMERMAN & HOLSBERRY, LLP.**

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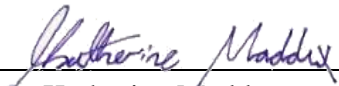
CERTIFICATE OF SERVICE

I certify that on this 21st day of July 2020, I electronically filed *RESPONSE TO DEFENDANTS SIGNATURES' AND BELLAGIO'S MOTION TO SEVER* with the Clerk of the Court using the ECF system which served the parties hereto electronically.

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Dated: July 21, 2020


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